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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LA TOIYA MORRISON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AMERICAN NATIONAL RED CROSS, a
Congressional Charter Corporation,

Defendant

Case No.: 4:19-cv-02855-HSG

**JOINT STIPULATION TO FILE SECOND
AMENDED COMPLAINT; ~~PROPOSED~~
ORDER**

1 IT IS HEREBY STIPULATED by and between LA TOIYA MORRISON (“Plaintiff”) and
2 AMERICAN NATIONAL RED CROSS (“Defendant”) as follows:

3 1. The parties have reached a class-wide settlement in this matter.

4 2. As part of the settlement, Defendant has agreed to enter into a joint stipulation seeking
5 approval from the Court for Plaintiff to file a Second Amended Complaint, which among other things,
6 add the following additional claims:

7 a. failure to pay at least minimum wage for all hours worked in violation of Labor Code §
8 1194, 1197, 1198, 510, IWC Wage Order, § 3 and 4 and corresponding California Code of Regulations;

9 b. failure to permit and authorize paid off-duty rest breaks and pay premium pay for missed
10 rest breaks in violation of Labor Code § 226.7, IWC Wage Order, §12 and corresponding California
11 Code of Regulations;

12 c. failure to provide off-duty meal breaks and pay premium pay for missed meal breaks in
13 violation of Labor Code §§ 226.7, 512 and IWC Wage Order, § 11 and corresponding California Code
14 of Regulations;

15 d. failure to issue accurate itemized wage statements and maintain payroll records in
16 violation of Labor Code § 226, 1174, 1174.5, IWC Wage Order § 7 and corresponding California Code
17 of Regulations;

18 e. failure to pay waiting time penalties in violation of Labor Code § 201-203; and

19 f. amending the PAGA cause of action and UCL Competition Law Violation claims to
20 include these Labor Code claims.

21 3. Subject to the Court’s approval, Plaintiff may file the Second Amended Complaint
22 attached hereto as **Exhibit 1**.

23 4. Subject to the Court’s approval, Defendant will not be required to file a responsive
24 pleading to the Second Amended Complaint at this time.

25 5. If the Court does not approve the Parties’ request for approval of a stipulated class
26 settlement or if the settlement is nullified, the Second Amended Complaint will be dismissed and the
27 First Amended Complaint will be the operative Complaint.

28 6. Defendant does not impliedly or expressly concede any of the legal or factual statements

1 in the Second Amended Complaint, nor does it waive any arguments or defenses to the Second
2 Amended Complaint. Defendant disagrees with the legal and factual assertions contained in the
3 Second Amended Complaint. Defendant has only provided its agreement to permit Plaintiff to file the
4 Second Amended Complaint in order to facilitate the settlement of this action

5 IT IS SO STIPULATED.

6
7 Dated: June 2, 2020

Respectfully submitted,

8 HammondLaw, P.C.

9
10 s/ Julian Hammond
11 Julian Hammond
Attorneys for Plaintiff

12 Dated: June 2, 2020

Littler Mendelson

13
14 /s/ Lisa Lin Garcia
15 Lisa Lin Garcia
Attorneys for Defendant

PROPOSED ORDER

Based on the parties' stipulation above, Plaintiff may file the Second Amended Complaint attached hereto as Exhibit "1." Defendant will not be required to file a responsive pleading to the Second Amended Complaint at this time. If however, the Parties' settlement is not approved by this Court or if the settlement is nullified, the Second Amended Complaint shall be dismissed and the First Amended Complaint shall be the operative Complaint.

DATED: 6/3/2020


HON. HAYWOOD GILLIAM, JR.

4851-8698-0542.2

EXHIBIT 1

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8
9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 LA TOIYA MORRISON, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,
14 vs.

15 AMERICAN NATIONAL RED CROSS, a
Congressional Charter Corporation,

16 Defendant.
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Case No.: 4:19-cv-02855-HSG

CLASS AND REPRESENTATIVE ACTION

SECOND AMENDED COMPLAINT FOR:

1. FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
2. FAILURE TO AUTHORIZE AND PERMIT PAID REST BREAKS (LABOR CODE § 226.7; IWC WAGE ORDER § 12);
3. FAILURE TO PROVIDE OFF-DUTY MEAL BREAK AND PAY PREMIUM PAY (LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER § 11);
4. FAILURE TO PAY ALL WAGES OWED (LABOR CODE §§ 510, 1194, 1197, 1198, IWC WAGE ORDER §§ 3-4);
5. FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS AND MAINTAIN PAYROLL RECORDS (CAL. LABOR CODE §§ 226, 1174, IWC WAGE ORDER § 7);
6. FAILURE TO PAY COMPENSATION DUE UPON DISCHARGE FROM EMPLOYMENT (CAL. LABOR CODE §§ 201-203);
7. UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204); AND
8. CIVIL PENALTIES PURSUANT TO PRIVATE ATTORNEY GENERAL ACT (LABOR CODE §§ 2698, ET SEQ.)

DEMAND FOR JURY TRIAL

1 Plaintiff La Toiya Morrison (“Plaintiff”), on behalf of herself and all others similarly situated
 2 (hereinafter “Class Members”), complains and alleges as follows:

3 **OVERVIEW OF CLAIMS**

4 1. This is a class action, under Federal Rules of Civil Procedure, Rule 23, seeking
 5 reimbursement for cell phone business expenses; unpaid premium pay; unpaid wages; statutory penalties
 6 for the failure to issue accurate itemized wage statements and maintain accurate payroll records; and for
 7 the failure to pay all wage due upon termination; interest; injunctive and other equitable relief, and
 8 reasonable attorneys’ fees and costs, under California Labor Code §§ 226(a) and (e), 201-203, 226.7,
 9 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802; applicable IWC Wage Order §§ 3, 4, 7, 11,
 10 and 12; corresponding sections of the California Codes of Regulation; and California Business and
 11 Professions Code § 17200, *et seq.*, on behalf of Plaintiff and all individuals who are or were employed
 12 by the American National Red Cross (“Defendant”) as Training Services instructors (formerly known as
 13 Preparedness and Health and Safety Services instructors) and Nurse Assistant Training instructors and
 14 who taught courses to Red Cross clients in California (“Class Members” or “Instructors”) during the
 15 four years prior to the filing of this action through to the trial date (“Class Period”).

16 2. The “Class Period” is designated as the period from four years prior to the filing of this
 17 action through the trial date. Defendant’s violations of California’s wage and hour laws and unfair
 18 competition laws, as described more fully below, have been ongoing for at least the past four years, are
 19 continuing at present.

20 3. During the Class Period, Plaintiff and Class Members paid cell phone expenses incurred
 21 by them in the course of their work for Defendant as Instructors, for which they have not received
 22 reimbursement from Defendant.

23 4. During the Class Period, Defendant did not authorize and permit Class Members to take
 24 paid off-duty rest breaks and did not have a policy and/or practice of paying premium pay for missed
 25 rest breaks, in violation of Labor Code § 226.7 and Wage Order § 12.

26 5. During the Class Period, Defendant failed to provide Class Members timely off-duty
 27 meal breaks and failed to pay premium pay for missed meal breaks, in violation of Labor Code §§
 28 226.7 and 512 and Wage Order § 11.

1 corresponding California Code of Regulations.

2 15. This Court has jurisdiction over Plaintiff's and Class Members' claims for
3 compensation due upon discharge from employment under Labor Code §§ 201-203.

4 16. This Court has jurisdiction over Plaintiffs' and Class Members' claims for failure to
5 issue accurate itemized wage statements under Labor Code § 226(a).

6 17. This Court has jurisdiction over Plaintiffs' and Class Members' claims for failure to
7 maintain accurate payroll records under Labor Code §§ 226, 1174(d) and 1174.5, applicable Wage
8 Order § 7 and corresponding California Code of Regulations.

9 18. This Court has jurisdiction over the claims for restitution arising from Defendant's
10 violations of Labor Code §§ 1197, 1198, 1194, 510, 2802, 226.7 and 512, applicable Wage Order §§ 3,
11 4, 11 and 12 and corresponding California Code of Regulations, under the UCL, Bus. & Prof. Code §§
12 17203 and 17204.

13 19. This Court has jurisdiction over claims for attorney's fees and costs pursuant to Labor
14 Code § 226(h), 2802, and Cal. Civ. Proc. Code § 1021.5.

15 20. This Court has jurisdiction over the claims for declaratory relief and injunctive relief
16 under the UCL, Bus. & Prof. Code §§ 17200 *et seq.*

17 21. This Court has jurisdiction over Plaintiff's claims for PAGA penalties under Labor
18 Code § 2699. On April 17, 2019 Plaintiff provided PAGA Notice pursuant to Labor Code § 2699.3 to
19 the Labor California Labor & Workforce Development Agency ("LWDA") and Defendant of
20 Defendant's alleged violations of Labor Code § 2802. On or about February 18, 2020 Plaintiff
21 provided PAGA Notice pursuant to Labor Code § 2699.3 to the Labor California Labor & Workforce
22 Development Agency ("LWDA") and Defendant of Defendant's alleged violations of Labor Code §§
23 201-203, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197 and 1198 as well as corresponding Wage
24 Order and California Code of Regulations. The LWDA has provided no notice to Plaintiff within the
25 period specified in Labor Code § 2699.3 regarding its intentions to investigate or not to investigate
26 Plaintiff's claims. Plaintiff has therefore fully complied with the PAGA procedural requirements and
27 may commence this representative action pursuant to Labor Code § 2699.
28

VENUE

22. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1441 and 1446.

PARTIES

23. Plaintiff La Toiya Morrison resides in Studio City, California. Plaintiff was employed by Defendant from approximately April 2018 through March 2019, and worked as an Instructor out of Defendant's Los Angeles, California, regional headquarters office. During that time Plaintiff Morrison was subject to Defendant's policies and/or practices set forth herein.

24. Defendant American National Red Cross is a Congressional Charter corporation with its principal place of business in Washington, DC. The policies and practices complained of herein were formulated, implemented, and maintained, in whole or in substantial part, at that address.

25. All of Plaintiff's claims stated herein are asserted against Defendant and any of its predecessors, successors, and/or assigns that do, or have done, business, and that employ, or have employed, Class Members in California during the Class Period.

FACTUAL BACKGROUND

26. Defendant operates and, at all times during the Class Period, has done business throughout California. Defendant, in the course of operating its business in California during the Class Period, employs or has employed Plaintiff and Class Members as Instructors.

Defendant Failed to Reimburse Class Members' Business Expenses

27. During the Class Period, Defendant's expense-related policies and/or practices require, and/or with Defendant's knowledge thereof permit, Plaintiff and Class Members to use their personal cell phones and pay for cell phone related business expenses incurred in direct consequence of discharging their instructor duties on behalf of Defendant, without reimbursement by Defendant for such expenses.

28. Specifically, during the Class Period, Instructors provide training courses on behalf of Defendant. In order to prepare for and conduct these training courses, Defendant requires and expects Instructors to communicate regularly with Defendant and Defendant's clients regarding scheduling, needs of particular clients, and more. Defendant, however, did not provide Instructors with cell phones

1 and they therefore must use their personal cellular phones to communicate with Defendant and
2 Defendant's clients.

3 29. Defendant was aware or should have been aware that Plaintiffs and Class Members
4 regularly incur cell phone related business expenses in the discharge of their work duties and was
5 required to reimburse them pursuant to Labor Code § 2802. Defendant nevertheless has, throughout the
6 Class Period, failed and refused to reimburse Plaintiff and Class Members for such cell phone related
7 business expenses incurred by them in their work for Defendant.

8 **Defendant Failed to Provide Rest and Meal breaks and Failed to Pay Premium Pay**

9 30. During the Class Period, Class Members were non-exempt employees. As a result,
10 during the Class Period Defendant was required to comply with the wage and hour obligations to,
11 including but not limited to, the obligation to authorize and permit off-duty rest periods and provide
12 off-duty meal periods, or pay premium pay in lieu thereof, to provide Class Members with accurate
13 itemized wage statements, and to pay Class Members all wages due upon termination, pursuant to
14 Labor Code §§ 226.7, 512, 226(a), 201-203, applicable Wage Order §§ 11 and 12 and corresponding
15 California Code of Regulations.

16 31. During the Class Period, Defendant failed, as a matter of policy and/or practice, to
17 permit and authorize Class Members to take off-duty rest breaks in violation of applicable Wage Order
18 § 12 and corresponding California Code of Regulations. In fact, Defendant had a written policy that
19 required Class Members to remain available to students during all scheduled class time thus impeding
20 Class Members' ability to take rest breaks.

21 32. Thus, Defendant failed to authorize and permit compliant rest breaks in accordance with
22 applicable Wage Order § 12(A) thereby triggering an obligation to make premium payments to
23 Plaintiffs and Class Members on a class-wide basis under Labor Code § 226.7. Defendant failed, as a
24 matter of policy and/or practice, to pay premium pay for missed rest breaks in violation of Labor Code
25 § 226.7.

26 33. During the Class Period, Defendant failed to provide Class Members with a 30-minute
27 meal break before the end of the fifth hour of each shift as required by Labor Code § 512, applicable
28 Wage Order § 11 and corresponding California Code of Regulations, thereby triggering an obligation

1 to make premium payments to Plaintiff and Class Members pursuant to Labor Code § 226.7.
2 Defendant failed, as a matter of policy and/or practice, to pay premium pay for missed meal breaks in
3 violation of Labor Code § 226.7.

4 **Defendant Failed to Pay All Wages Owed**

5 34. During the Class Period, Class Members were non-exempt employees, and Defendant
6 was required to pay them all wages owed (including applicable minimum wages, straight time wages
7 and overtime wages) for the hours that they worked under Labor Code §§ 510, 1194, 1197, 1198,
8 applicable Wage Order §§ 3 and 4, and corresponding California Code of Regulations.

9 35. During the Class Period, as a result of Defendant's requirement that Class Members'
10 work through their unpaid meal break time, Defendant failed to pay Class Members' at least minimum
11 wage for all hours worked and failed to pay overtime wages for all hours worked, in violation of Labor
12 Code §§ 510, 1194, 1197 and 1198.

13 **Defendant Failed to issue Accurate Itemized Wage Statements**

14 36. As an additional consequence of Defendant's failure to provide compliant meal and rest
15 breaks, failure to pay premium pay, and failure to pay wages for all hour worked, Plaintiff and Class
16 Members did not receive accurate itemized wage statements as required by Labor Code § 226(a)(1),
17 (a)(2), (a)(5), and (a)(9) that included accurate entries applicable hourly rates, total hours worked, net
18 wages, and gross wages earned.

19 **Defendant Failed to Pay All Wages Due and Owing Upon Termination**

20 37. As a further consequence of Defendant's failure to provide compliant meal and rest
21 breaks, failure to pay wages premium pay, and failure to pay wages for all hours worked, Plaintiff and
22 Class Members whose employment with Defendant was terminated did not receive all compensation
23 due to them in their final paychecks. As a result, Plaintiffs and these Class Members did not receive all
24 wages due upon termination; nor did they receive these wages due within 30 days of the separation of
25 their employment from Defendant in violation of Labor Code §§ 201-203.

26 **Defendant Failed to Maintain Accurate Records**

27 38. As a further consequence of Defendant's failure to provide compliant meal and rest
28 breaks, failure to pay wages premium pay, and failure to pay wages for all hours worked, Defendant

1 failed to maintain accurate records required under Labor Code §§ 226, 1174(d), 1174.5, applicable
2 Wage Order § 7, and corresponding California Code of Regulations.

3 **Defendant's Labor Code Violations Were Unfair Business Practices**

4 39. From at least four years prior to filing this complaint, through the present, Defendant
5 has adopted and used unfair business practices to reduce Class Members' compensation and increase
6 profits. These unfair business practices include failing to authorize and permit timely off-duty rest
7 periods and meal breaks; failing to pay premium pay for missed breaks; failing to pay all wages owed
8 (including minimum, straight and overtime wages); and failing to reimburse Class Members for their
9 cell phone expenses.

10 **CLASS ACTION ALLEGATIONS**

11 40. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
12 class action pursuant to Federal Rules of Civil Procedure, Rule 23.

13 41. This action has been brought and may properly be maintained as a class action under
14 Federal Rules of Civil Procedure, Rule 23, because there is a well-defined community of interest in the
15 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
16 Class:

17 a. **Numerosity**: The potential members of the Class as defined are so numerous
18 and so diversely located throughout California, that joinder of all the members of the Class is
19 impracticable. Plaintiff is informed and believes that Defendant has at all times during the Class
20 Period employed approximately 370 Instructors in California subject to Defendant's unlawful policies
21 and/or practices. The Class Members are dispersed throughout California. Joinder of all members of
22 the proposed class is therefore not practicable.

23 b. **Commonality**: There are questions of law and fact common to the Plaintiff and
24 the Class that predominate over any questions affecting only individual members of the Class. These
25 common questions of law and fact include, without limitation:

26 i. Whether Plaintiff and Class Members incurred unreimbursed cell phone
27 related business expenses in the discharge of their duties as employees.

1 ii. Whether Defendant intended, suffered and/or permitted, and/or was
2 aware that Plaintiff and Class Members incurred such unreimbursed cell phone related business
3 expenses in the discharge of their duties as employees.

4 iii. Whether Defendant failed and/or refused to reimburse cell phone related
5 business expenses incurred by Plaintiff and Class Members in the discharge of their duties.

6 iv. Whether Defendant violated Labor Code § 2802 by denying Plaintiff and
7 other Class Members reimbursement for their cell phone related business expenses.

8 v. Whether Defendant maintained policies and/or practices that prevented
9 or impeded Class Members from being authorized and permitted to take off-duty rest periods during
10 the Class Period;

11 vi. Whether Defendant maintained policies and/or practices that prevented
12 or impeded Class Members from being provided off-duty meal periods during the Class Period;

13 vii. Whether Defendant violated Labor Code § 226.7, applicable Wage
14 Order §§ 11 and 12 and corresponding California Code of Regulations by failing to pay one hour of
15 premium pay to each member of the Class for each day that an off-duty rest period or meal period was not
16 provided during the Class Period;

17 viii. Whether Defendant violated Labor Code §§ 510, 1194, 1197 and 1198,
18 applicable Wage Order §§ 3 and 4 and corresponding California Code of Regulations by failing to pay
19 Class Members all wages owed (including applicable minimum wages, straight time wages and
20 overtime wages) for the hours that they worked;

21 ix. Whether Defendant issued wage statements to Plaintiffs and Class
22 Members that failed to include accurate entries for applicable hourly rates, total hours worked, net wages
23 earned, and gross wages earned as required by Labor Code § 226(a)(1), (a)(2), (a)(5), and (a)(9);

24 x. Whether Defendant's violation of Labor Code § 226(a) was knowing and
25 intentional;

26 xi. Whether Defendant violated Labor Code §§ 201-203 by failing to pay
27 Class Members for all of their wages due to them upon separation of their employment;
28

xii. Whether Defendant failed to maintain required records required under Labor Code §§ 226, 1174, 1174.5, applicable Wage Order § 7 and corresponding California Code of Regulations;

xiii. Whether these violations of the above Labor Code provisions constitute unfair, unlawful, and fraudulent business practices, in violation of UCL;

xiv. Whether Plaintiff is entitled to restitution under Business and Professions Code § 17200 for unpaid premium pay and unreimbursed cell phone expenses incurred by Plaintiff and Class Members.

xv. Whether the Class is entitled to declaratory relief.

xvi. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class Members. Plaintiff's interests do not conflict with those of Class Members. Counsel who represents Plaintiff is competent and experienced in litigating large wage and hour class action and will devote sufficient time and resources to the case and otherwise adequately represent the Class.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendant

1 has enjoyed by maintaining its unlawful policies and/or practices, and will thereby effectuate
 2 California's strong public policy of protecting employees from deprivation of compensation earned in
 3 their employment. If this action is not certified as a Class Action, it will be impossible as a practical
 4 matter for many or most Class Members to bring individual actions to recover monies unlawfully
 5 withheld from their lawful compensation due from Defendant, due to the relatively small amounts of
 6 such individual recoveries relative to the costs and burdens of litigation.

7 **FIRST CAUSE OF ACTION**
 8 **Failure to Reimburse for Business Expenses**
 9 **(Labor Code § 2802)**

10 42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
 11 the preceding paragraphs.

12 43. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee
 13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
 14 discharge of his or her duties."

15 44. In order to discharge their job duties for Defendant, Plaintiff and similarly situated
 16 Instructors were required and/or expected by Defendant to use their own personal cell phones for
 17 business communications. However, Defendant did not provide them with company cell phone and
 18 did not pay them for expenses incurred as a result of Plaintiff's and Class Members' use of their
 19 personal cell phones for work.

20 45. Defendant's failure to pay for or reimburse the work-related cell phone expenses of
 21 Plaintiff and other Class Members violated non-waivable rights secured to them by Labor Code
 22 § 2802. Plaintiff and Class Members are entitled to reimbursement for these necessary expenditures,
 23 plus interest, under Labor Code § 2802.

24 46. As a result of Defendant's violations of Labor Code § 2802, Defendant is also liable for
 25 attorneys' fees and costs under Labor Code § 2802(c).

26 47. Plaintiff, on behalf of herself and Class Members, request relief as described below

27 **SECOND CAUSE OF ACTION**
 28 **Failure to Authorize and Permit Off-Duty Rest Breaks or Pay Missed Rest Period Premiums**
[Cal. Labor Code § 226.7; IWC Wage Order § 12; corresponding California Code of
Regulations]

48. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in

1 the preceding paragraphs.

2 49. Applicable IWC Wage Order § 12(A) and corresponding California Code of
3 Regulations provide:

4 “(A) Every employer shall authorize and permit all employees to take rest periods, which
5 insofar as practicable shall be in the middle of each work period. The authorized rest
6 period time shall be based on the total hours worked daily at the rate of ten minutes net
7 rest time per four hours or major fraction thereof. However, a rest period need not be
8 authorized for employees whose total daily work time is less than three and one-half (3
9 1/2) hours. Authorized rest period time shall be counted as hours worked for which there
10 shall be no deduction from wages.”

11 50. California Labor Code § 226.7(a) provides, “No employer shall require any employee to
12 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
13 Commission.”

14 51. As set forth above, Class Members routinely worked 3.5 hours or longer without being
15 authorized and permitted to take an off-duty rest breaks to which they were entitled, in violation of
16 applicable Wage Order § 12 and corresponding California Code of Regulations.

17 52. Defendant did not have a policy and/or practice of paying Plaintiffs and Class Members
18 for missed rest breaks in violation of Labor Code § 226.7, applicable Wage Order § 12 and
19 corresponding California Code of Regulations.

20 53. As a result of Defendant’s policies and practices, Plaintiffs and the Class are entitled to
21 recover one additional hour of pay at the employee’s regular rate of compensation for each day in which
22 Defendant failed to authorize and permit Class Members to take rest periods as required under Labor
23 Code § 226.7, applicable Wage Order § 12 and corresponding California Code of Regulations.

24 54. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
25 below.

26 **THIRD CAUSE OF ACTION**

27 **Failure to Provide Compliant Meal Periods and Pay Missed Meal Period Premiums**
28 **[Cal. Labor Code § 226.7 and 512; Wage Order § 11; corresponding California Code of Regulations]**

1 55. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
2 the preceding paragraphs.

3 56. California Labor Code § 512(a) provides: “An employer may not employ an employee
4 for a work period of more than five hours per day without providing the employee with a meal period of
5 not less than 30 minutes...”

6 57. California Labor Code § 226.7(a) provides: “No employer shall require any employee
7 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
8 Commission.”

9 58. Applicable Wage Order No. § 11(A) and corresponding California Code of Regulations
10 provide: “(A) No employer shall employ any person for a work period of more than five (5) hours
11 without a meal period of not less than 30 minutes...”

12 59. As alleged herein, Plaintiff and Class Members regularly worked five (5) hours or more
13 in a day without being provided a 30-minute meal period in which they were relieved of all duties, in
14 violation of Labor Code § 512, applicable Wage Order No. § 11(A) and corresponding California Code
15 of Regulations.

16 60. As a result, Plaintiff and the Class are entitled to recovery under Labor Code § 226.7,
17 applicable Wage Order § 11 and corresponding California Code of Regulations in the amount of one
18 additional hour of pay at the employee’s regular rate of compensation for each day in which Defendant
19 failed to provide Class Members with off-duty meal periods as required by California law.

20 61. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
21 below.

22 **FOURTH CAUSE OF ACTION**

23 **Failure to Pay Wages for All Hours Worked**

24 **[Labor Code §§ 510, 1194, 1197 and 1198; Wage Order § 3 and 4; corresponding California Code
25 of Regulations]**

26 62. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
27 the preceding paragraphs.

28 63. During the Class Period, Defendant required and expected Plaintiff and Class Members
to perform work during their unpaid meal break time, which Plaintiff and Class Members did perform,

1 but were not compensated for, in violation of applicable Wage Order §§ 3-4, corresponding California
2 Code of Regulations and Labor Code §§§ 510, 1194, 1197, 1198.

3 64. As a result, Plaintiff and the Class are entitled to recover their unpaid wages, unpaid
4 overtime wages, interest, attorneys' fees and costs, statutory penalties, plus liquidated damages in an
5 additional amount equal to the total amount of wages unlawfully withheld during the Class Period.

6 65. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
7 below.

8 **FIFTH CAUSE OF ACTION**

9 **Failure to Issue Accurate Itemized Wage Statements and Maintain Payroll Records [Cal. Labor Code §§ 226, 1174, 1174.5, Wage Order § 7; corresponding California Code of 10 Regulations]**

11 66. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
12 the preceding paragraphs.

13 67. Labor Code § 226(a) requires employers to furnish their employees with wage
14 statements containing accurate entries for "(1) gross wage earned, (2) total hours worked by the
15 employee...(5) net wages earned, ... (9) all applicable hourly rates in effect during the pay period and
16 the corresponding number of hours worked at each hourly rate by the employee."

17 68. Under Labor Code §§ 226, 1174(d) and 1174.5, applicable Wage Order § 7, and
18 corresponding California Code of Regulations, Defendant was required to maintain accurate records for
19 Plaintiff and Class Members.

20 69. Based on the allegations above, Defendant issued Plaintiffs and Class Members wage
21 statements that lacked accurate entries for applicable hourly rates in effect during the pay period, total
22 hours worked, net wages, and gross wages earned in violation of Labor Code § 226(a)(1), (a)(2), (a)(5),
23 and (a)(9). Defendant failed to maintain accurate records of, among other things, the applicable hourly
24 rates in effect during the pay period, total hours worked, net wages, and gross wages earned.

25 70. Plaintiff and Class Members suffered injury as a result of Defendant's knowing and
26 intentional failure to comply with Labor Code § 226(a). As a result, Class Members are entitled to
27 recover \$50 for each initial pay period with a violation, and \$100 for each subsequent pay period with a
28 violation, up to an amount not exceeding an aggregate penalty of \$4,000 for each Class Member,

1 pursuant to Labor Code § 226(e).

2 71. Plaintiff, on behalf of herself and all Class Members, request relief as described below.

3 **SIXTH CAUSE OF ACTION**
4 **Failure to Pay Compensation Due Upon Termination**
5 **[Cal. Labor Code §§ 201-203]**

6 72. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
7 the preceding paragraphs.

8 73. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing
9 to Class Members promptly after their employment was terminated. Labor Code § 203 provides that
10 if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required
11 by §§ 201 and 202, then the employer is liable for penalties in the form of continued compensation up
12 to 30 work days.

13 74. As alleged herein, Defendant willfully failed to pay Plaintiff and Class premium pay
14 during their employment, and failed to pay wages for all hours worked, upon their termination or
15 separation from employment with Defendant, as required by Labor Code §§ 201 and 202.

16 75. In light of the clear law requiring Defendant to authorize and permit Class Members to
17 take off-duty rest breaks and pay premium pay for missed rest breaks, and provide Class Members
18 with off-duty meal breaks and pay premium pay for missed meal breaks, and pay Class Members at
19 the applicable minimum wage, straight time and/or the applicable overtime rate for all time spent
20 working, Defendant's failure to pay wages for such time was willful.

21 76. As a result, Defendant is liable to Plaintiff and Class Members whose employment
22 terminated for waiting time penalties amounting to thirty (30) days wages for each formerly employed
23 Class Member pursuant to Labor Code § 203.

24 77. Plaintiff, on behalf of herself and all other Class Members, request relief as described
25 below.

26 **SEVENTH CAUSE OF ACTION**
27 **Unfair Competition Law Violation**
28 **(Bus. & Prof. Code §§ 17200 et seq.)**

78. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
the preceding paragraphs.

1 79. Business & Professions Code §§ 17200, *et seq.* prohibits unfair competition in the form
2 of any unlawful, unfair, or fraudulent business act or practice. Business & Professions Code § 17204
3 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
4 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
5 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

6 80. Beginning at least four years prior to the filing of this Complaint, Defendant committed,
7 and continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying
8 Class Members off-duty rest breaks and meal breaks, failing to pay premium pay for missed breaks,
9 and failing to pay them all wages owed (including applicable minimum wages, straight time wages and
10 overtime wages) for the hours that they worked, failing to pay them all wages due at time of discharge
11 and failing to reimburse them for reasonable necessary business expenses in violation of Labor Code
12 §§ 201-203, 226.7, 512, 510, 1194, 1174.5, 1197, 1198, 2802, applicable Wage Order No. §§ 3, 4, 11
13 and 12, and corresponding California Code of Regulations.

14 81. By its actions and omissions, Defendant has substantially injured Plaintiff and the Class
15 Members. Defendant’s conduct as herein alleged has damaged Plaintiff and the Class and was
16 substantially injurious to them.

17 82. The harm to Plaintiff and the Class resulting from Defendant’s labor code violations
18 outweighs the utility, if any, of Defendant’s policies and practices. Therefore, Defendant’s actions
19 described herein constitute an unfair business practice or act within the meaning of the UCL.

20 83. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
21 specified herein by suing on behalf of herself and other similarly situated members of the public
22 previously and presently employed by Defendant in California. Plaintiff’s success in this action will
23 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing
24 this action in the public interest. Therefore, an award of reasonable attorneys’ fees to Plaintiff is
25 appropriate pursuant to Code of Civil Procedure § 1021.5.

26 84. Plaintiff, on behalf of herself and the Class, requests relief as described below.
27
28

EIGHTH CAUSE OF ACTION
Civil Penalties (Labor Code §§ 2698 et seq.)

85. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

86. Plaintiff is an “Aggrieved Employee” under PAGA as she was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff seeks to recover, on behalf of herself and all Aggrieved Employees of Defendant, civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

87. Plaintiff seeks PAGA penalties on behalf of herself and Aggrieved Employees against Defendant for the following violations:

Violation of IWC Wage Order § 12, corresponding California Code of Regulations, and Labor Code §§ 226.7

88. During the PAGA Period, Defendant failed to authorize and permit paid rest breaks and pay missed rest break premiums in violation of Labor Code § 226.7, applicable IWC Wage Order § 12 and corresponding California Code of Regulations, as described above.

89. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per pay period for each subsequent violation.

Violation of Labor Code § 2802

90. During the PAGA Period, Defendant failed to reimburse Aggrieved Employees for their necessarily incurred business expenses in violation of Labor Code § 2802.

91. Under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved Employee for each initial violation of Labor Code § and two hundred dollars (\$200) per pay period for each subsequent violation.

Violation of Labor Code §§ 226.7 and 512, IWC Wage Order § 11, corresponding California Code of Regulations

92. During the PAGA Period, Defendant failed to provide off-duty meal breaks and pay missed meal break premiums in violation of Labor Code § 226.7 and 512, applicable IWC Wage Order § 11 and corresponding California Code of Regulations, as described above.

93. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per pay period for each subsequent violation.

Violation of Labor Code §§ 510, 1194, 1197, 1197.1, 1198, IWC Wage Order §§ 3-4, corresponding California Code of Regulations,

94. During the PAGA Period, Defendant failed to pay Aggrieved Employees all wages owed (including applicable minimum wages, straight time wages and overtime wages) for the hours that they worked in violation of Labor Code §§ 510, 1194, 1197 and 1198, applicable IWC Wage Order §§ 3-4 and corresponding California Code of Regulations, as described above.

95. Pursuant to Labor Code § 558, Plaintiff and Aggrieved Employees are entitled to fifty hundred dollars (\$50) for each initial violation and one hundred dollars (\$100) for each subsequent violation.

Violation of Labor Code §§ 226(a)

96. During the PAGA Period, Defendant failed to issue accurate itemized wage statements containing all applicable hourly rates in effect during the pay period, gross wages, and net wages, violation of Labor Code §§ 226(a).

97. Under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved Employee for each initial violation of Labor Code § 226(a)(1), (a)(2), (a)(5), and (a)(9), and two hundred dollars (\$200) per pay period for each subsequent violation.

Violation of Labor Code §§ 201-203

98. During the PAGA Period, Plaintiff and formerly employed Aggrieved Employees also did not receive all compensation due to them in their final paychecks in violation of Labor Code §§ 201-203.

99. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per pay period for each subsequent violation.

Violation of Labor Code §§ 226, 1174(d) and 1174.5; IWC Wage Order § 7, corresponding California Code of Regulations,

100. As a result of the Labor Code violations described above, Defendant willfully failed to keep accurate payroll records showing, among other things, the hours worked by the Aggrieved Employees, in violation of Labor Code §§ 226, 1174(d), applicable IWC Wage Order § 7, corresponding California Code of Regulations.

101. Pursuant to Labor Code § 1174.5, Plaintiff and each Aggrieved Employee are entitled to a civil penalty of \$500 per violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff request the following relief:

A. That the Court determine that this action may be maintained as a class action under Federal Rules of Civil Procedure, Rule 23, and define the Class as requested herein;

B. That the Court find and declare that Defendant's business expense policies and/or practices violate California law, including Labor Code § 2802, and award to Plaintiff and Class Members all unreimbursed cell phone related business expenses, and interest thereon, pursuant to Labor Code § 2802;

C. That the Court find and declare that Defendant violated Labor Code § 226.7. Wage Order § 12 and corresponding California Code of Regulations by failing to pay Plaintiffs and Class Members premium pay for missed rest breaks; and award Plaintiffs and the Class unpaid premium pay for missed rest breaks;

D. That the Court find and declare that Defendant violated Labor Code §§ 226.7 and 512, Wage Order § 11 and corresponding California Code of Regulations by failing to provide compliant meal breaks and award Plaintiff and the Class unpaid premium pay for missed meal breaks.

E. That the Court find and declare that Defendant violated Labor Code §§ 510, 1194, 1197, 1198, Wage Order §§ 3 and 4 and corresponding California Code of Regulations by failing to pay Class Members wages for all work performed by them; and award Plaintiff and Class Members unpaid wages, interest, and liquidated damages;

F. That the Court find and declare that Defendant has violated Labor Code §§ 226(a), (e); award Plaintiff and Class Members statutory penalties under Labor Code § 226(e);

1 G. That the Court find and declare that Defendant has violated Labor Code §§ 226, 1174
2 and 1174.5;

3 H. That the Court find and declare that Defendant has violated §§ 201-203 of the
4 California Labor Code, and award Plaintiff and Class Members penalties in the amount of 30 days'
5 wages per Class Member;

6 I. That the Court find and declare Defendant has violated the UCL by failing to authorize
7 and permit compliant rest breaks and pay premium pay for missed rest breaks; failing to provide
8 compliant meal breaks and pay premium pay for missed meal breaks; failing to pay wages for all hours
9 worked; and failing to reimburse necessarily incurred business expenses; award restitution to the Class
10 in the amount of unpaid premium pay, unpaid wages, and unreimbursed expenses; and enjoin
11 Defendant from continuing to enforce policies and practices that violate Labor Code §§ 226.7, 510,
12 512, 1194, 1197, 1198 and 2802.

13 J. That the Court award Plaintiff and Aggrieved Employees civil penalties pursuant to
14 PAGA;

15 K. That be Plaintiff and the Class awarded reasonable attorneys' fees and costs pursuant to
16 Labor Code §§ 2802(c), 226(e), 1194, 2699, Code of Civil Procedure § 1021.5, and/or other applicable
17 law;

18 L. That the Court award such other and further relief as this Court may deem appropriate.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff, on behalf of herself and the Class Members hereby demands a jury trial on all causes
21 of action and claims with respect to which she has a right to jury trial.

22 Dated: June 1, 2020

23 Respectfully submitted,

24 HAMMONDLAW, P.C.

25 
26 Julian Hammond

27 Attorney for Plaintiff and the Putative Class
28